

THE CONSUMER PROTECTION FIRM

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September 2, 2016

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**RE: Mortgage Bankers Association Petition for TCPA Exemption
CG Docket No. 02-278**

Ms. Dortch:

For more than twenty years as a consumer rights attorney in Florida, I've been on the front lines of fighting to protect individual low-income consumers from the abusive and corrupt practices of corporations, big banks, insurance companies and debt collectors of every shape and size. Most recently, I spent ten years in a very unique position working for one of the largest consumer rights law firms in the country, where I had the opportunity to review upwards of two hundred consumer complaints per day. Due to my experiences over the past two decades, I am duty-bound to submit this letter in staunch opposition to the Mortgage Bankers Association ("MBA") Petition¹ seeking to exempt its members from the "prior express consent" requirement of the Telephone Consumer Protection Act ("TCPA").² To put it simply, the MBA is asking that big banks and mortgage servicer debt collectors be given free rein to make unfettered robocalls for debt collection and other, general "mortgage servicing"³ purposes.

This petition is undoubtedly a Trojan horse for mortgage bankers and their cohorts to eliminate accountability for the relentless robocall pressure tactics employed by them on a daily basis. I have represented close to a thousand consumers bullied by these types of robocall campaigns and witnessed, first hand, the helplessness and desperation that overcomes many consumers unable to stop such calls. Of course, this tactic is no secret. "If robocalls were a disease, they would be an epidemic."⁴ An average of 184,000 complaints were made to the Federal Trade Commission (FTC) every month in 2015 about robocalls.⁵ Some estimate that 35 percent of all calls

¹ Petition for Exemption by Mortgage Bankers Association, CG Docket 02-278, *available at* <https://ecfsapi.fcc.gov/file/60002303090.pdf>.

² 47 U.S.C. § 227 *et. seq.*

³ MBA Petition at 13.

⁴ *Rage Against Robocalls*, Consumer Reports (July 28, 2015)[hereinafter, *Rage Against Robocalls*], *available at* <http://www.consumerreports.org/cro/magazine/2015/07/rage-against-robocalls/index.htm>.

⁵ Federal Trade Commission, National Do Not Call Registry Data Book, FY 2015, at 5 (Nov. 2015).

in the U.S. are robocalls.⁶ More than half of these calls occurred after the consumer had already requested that the company stop calling.⁷ And the problem is only escalating. In the first four months of 2016, the complaint numbers have spiked again, increasing to an average of over 279,000 a month, which will produce a yearly rate of over 3.3 million complaints.⁸

Now take a minute to imagine a world where mortgage bankers and third-party debt collectors are unbound by the current restraints of the “prior express consent” requirement under the TCPA—which, by the way, is routinely violated by mortgage servicers almost as a course of business today. In that single minute, countless MBA members likely used an automated telephone dialing system capable of dialing thousands of phone numbers per minute. My clients endure these high volume auto-dialer calls daily, with some receiving up to twenty to thirty calls per day. It is extremely common for these mortgage bankers to call thousands of times in a year. In fact, I have personally handled hundreds of cases involving mortgage servicers that robo-dialed my client more than one thousand times.

Yet, the MBA and its members are now shamelessly requesting that you disregard these staggering statistics and facts, as well as the thousands of individual comments in opposition to their petition. In effect, the MBA is actually asking that this Commission sanction mortgage servicers’ robocall abuses by granting them an exemption from TCPA liability. This flies in the face of the FCC’s mission and strategic goals, most notably “protecting public interest goals,” including “consumer protection.”⁹ The “prior express consent” requirement is a thoughtful and essential provision of the TCPA. It strikes a reasonable balance between businesses desire to communicate with consumers and a consumer’s right to privacy, freedom from harassment, and control over one’s own cellphone and time.

Equally as shocking is that we have a law in Florida called the Florida Consumer Collection Practices Act (“FCCPA”)¹⁰, which allows Floridians to sue all creditors directly. Despite this law, the harassment and abuse from mortgage bankers is still incredibly high. Ironically, as we are seeing today with the MBA’s Petition, there was a similar attack waged just last year by the mortgage bankers cabal against the FCCPA that sought to erode the rights of consumers by exempting themselves from liability under Florida law.¹¹ In 2015, I was called upon to testify as an expert in front of a Congressional Banking Committee about how House Bill 713 was merely an attempt to change the FCCPA to only apply to third-party debt collectors, rather than all creditors. It was nothing more than a thinly veiled effort by the banking industry to skirt liability and unleash robocall harassment campaigns on consumers with no repercussions. Thankfully for Floridians, this bill was defeated earlier this year.¹²

⁶ *Rage Against Robocalls*.

⁷ Federal Trade Commission, National Do Not Call Registry Data Book, FY 2015, at 5 (Nov. 2015).

⁸ *The Telephone Consumer Protection Act at 25: Effects on Consumers and Business: Hearing Before the S. Comm. on Commerce, Sci., and Transp.*, 114th Cong. 3 (2016) (testimony of Margot Saunders, National Consumer Law Center).

⁹ See <https://www.fcc.gov/about/overview>.

¹⁰ Fla. Stat. §559.55 *et seq.*

¹¹ 2016 Fla. Leg. Sess., HB 713 (2015) (died in House Regulatory Affairs Committee), available at <https://www.flsenate.gov/Session/Bill/2016/0713/?Tab=BillHistory>

¹² *Id.*

I encourage this Commission to deliver the MBA Petition to a similar fate. Allowing mortgage bankers and their third-party debt collectors to make unlimited calls without the consent of the person called would be devastating for households already struggling to pay basic bills and save their homes from foreclosure. The prospect of foreclosure is stressful enough as it is, but it's magnified when you add an onslaught of harassing robocalls to the mix. In some cases, it can create a deadly cocktail.

Our firm currently represents a client whose family is still grieving the unexpected loss of a beloved husband, father and friend named Frank Collelo, who was quite literally robocalled to death.¹³ Mr. Collelo fought for years to keep his home, until finally succumbing to foreclosure in 2014. During that foreclosure process, Mr. Collelo also began receiving a barrage of robocalls from two mortgage banks and two different mortgage servicer debt collectors; between the four defendants, Mr. Collelo often received calls up to eight times a day every day from 2014 to 2015. Even after giving his house back to the bank in 2014, the calls continued. The inherent stresses of foreclosure combined with the robocall bullying took a toll on Mr. Collelo's health. On March 3, 2015, Frank Collelo, at just 67 years old, died of a heart attack inside of a Florida courtroom during a foreclosure proceeding.

Countless clients represented by our firm experience similar harassment tactics from members of the MBA. Our clients are regular people. Many of them have fallen behind on their mortgage payments due to a death in the family, personal health issues, or the loss of a job. And all of them desperately want to make payments on their homes, but are simply unable to. Despite explaining their circumstances and requesting that the calls stop, mortgage servicers continue to relentlessly robo-dial our clients. "Senator Hollings, the TCPA's sponsor, described these calls as 'the scourge of modern civilization, they wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone out of the wall.'"¹⁴ Senator Hollings presumably intended to give telephone subscribers another option: telling the autodialers to simply stop calling."¹⁵

However, the MBA would have you believe that this exemption request is somehow intended to benefit consumers; that it is seeking to ensure that mortgage servicers can communicate "important information that could keep them [homeowners] in their homes."¹⁶ This perverse assertion requires the suspension of both reality and commonsense. Acquiring consent is not difficult or overly burdensome. Consumers who want to receive phone calls will provide consent. Consumers who do not want to receive phone calls will not consent and, instead, often ask that the calls stop immediately. Mortgage servicers should respect and honor those wishes. It is that simple.

¹³ Case No. 8:16-cv-00225-MSS-TBM (M.D. Fla. filed Jan. 28, 2016); *See also*, <http://www.abcactionnews.com/money/consumer/taking-action-for-you/first-of-its-kind-lawsuit-accuses-banks-of-killing-customer>.

¹⁴ 137 Cong. Rec. 30, 821 (1991).

¹⁵ *Osario v. State Farm Bank*, F.S.B., 746 F. 3d 1242 (11th Cir. 2014).

¹⁶ MBA Petition at 6.

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MBA members and their debt-collector lackeys are pushing for zero oversight. They want to self-police their robocall campaigns, despite regularly showing that they aren't even capable of following existing laws and regulations. These mortgage bankers and third-party debt collectors should not be exempt from the TCPA, which is the only line of defense preventing them from blasting consumers with robocalls every hour of every day. For the foregoing reasons, we respectfully request that the Petition of the Mortgage Bankers Association be denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'WPH', with a long horizontal line extending to the right.

WILLIAM PEERCE HOWARD, ESQ.
THE CONSUMER PROTECTION FIRM